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Chapter No. 460
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SENATE BILL NO. 2561

Originated in Senate Ling Welch Secretary

SENATE BILL NO. 2561

AN ACT TO AMEND SECTION 93-21-13, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR WIDE-RANGING APPLICATION OF EMERGENCY DOMESTIC ABUSE PROTECTION ORDERS; TO AMEND SECTION 93-21-15, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR WIDE-RANGING APPLICATION OF OTHER DOMESTIC ABUSE PROTECTION ORDERS; TO CREATE NEW SECTION 93-21-15.1, MISSISSIPPI CODE OF 1972, TO PROVIDE APPELLATE PROCEDURES FOR APPEALS OF DOMESTIC ABUSE PROTECTION ORDERS, AND TO SPECIFY WHEN SUCH APPEALS ARE ON THE RECORD OR ARE DE NOVO; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 93-21-13, Mississippi Code of 1972, is amended as follows:

93-21-13. (1) (a) The court in which a petition seeking emergency relief pending a hearing is filed must consider all such requests in an expedited manner and shall not refer or direct the matter to be sent to another court. The court may issue an emergency domestic abuse protection order without prior notice to the respondent upon good cause shown by the petitioner. Immediate and present danger of abuse to the petitioner, any minor children or any person alleged to be incompetent shall constitute good cause for issuance of an emergency domestic abuse protection

order. The respondent shall be provided with notice of the entry of any emergency domestic abuse protection order issued by the court by personal service of process.

(b) A court granting an emergency domestic abuse protection order may grant relief as provided in Section 93-21-15(1)(a).

(c) An emergency domestic abuse protection order shall be effective for ten (10) days, or until a hearing may be held, whichever occurs first. If a hearing under this subsection (1) is continued, the court may grant or extend the emergency order as it deems necessary for the protection of the abused person. A continuance under this subsection (1)(c) shall be valid for no longer than twenty (20) days.

(2) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for emergency domestic abuse protection orders. Use of the standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(3) Upon issuance of any protection order by the court, the order shall be entered into the Mississippi Protection Order Registry by the clerk of the court pursuant to Section 93-21-25,

and a copy provided to the sheriff's department in the county of the court of issuance.

(4) * * * An emergency domestic abuse protection order issued under this section is effective in this state, in all other states, and in United States territories and tribal lands. A court shall not limit the scope of a protection order to the boundaries of the State of Mississippi or to the boundaries of a municipality or county within the State of Mississippi.

SECTION 2. Section 93-21-15, Mississippi Code of 1972, is amended as follows:

93-21-15. (1) (a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the municipal and justice courts shall be empowered to grant a temporary domestic abuse protection order to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. The relief the court may provide includes, but is not limited to, the following:

(i) Directing the respondent to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;

(ii) Prohibiting or limiting respondent's physical proximity to the abused or other household members as designated by the court, including residence and place of work;

(iii) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court, whether in person, by telephone or by other electronic communication;

(iv) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both; or

(v) Prohibiting the transferring, encumbering or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business.

(b) The duration of any temporary domestic abuse protection order issued by a municipal or justice court shall not exceed thirty (30) days. However, if the party to be protected and the respondent do not have minor children in common, the duration of the temporary domestic abuse protection order may exceed thirty (30) days but shall not exceed one (1) year.

(c) * * * Procedures for an appeal of the issuance of a temporary domestic abuse protection order are set forth in Section 93-21-15.1.

(2) (a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the chancery or county court shall be empowered to grant

a final domestic abuse protection order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. In granting a final domestic abuse protection order, the chancery or county court may provide for relief that includes, but is not limited to, the following:

(i) Directing the respondent to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;

(ii) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both;

(iii) When the respondent has a duty to support the petitioner, any minor children, or any person alleged to be incompetent living in the residence or household and the respondent is the sole owner or lessee, granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both, or by consent agreement allowing the respondent to provide suitable, alternate housing;

(iv) Awarding temporary custody of or establishing temporary visitation rights with regard to any minor children or any person alleged to be incompetent, or both;

(v) If the respondent is legally obligated to support the petitioner, any minor children, or any person alleged to be incompetent, ordering the respondent to pay temporary support for the petitioner, any minor children, or any person alleged to be incompetent;

(vi) Ordering the respondent to pay to the abused person monetary compensation for losses suffered as a direct result of the abuse, including, but not limited to, medical expenses resulting from such abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, a reasonable attorney's fee, or any combination of the above;

(vii) Prohibiting the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business;

(viii) Prohibiting or limiting respondent's physical proximity to the abused or other household members designated by the court, including residence, school and place of work;

(ix) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court whether in person, by telephone or by electronic communication; and

(x) Ordering counseling or professional medical treatment for the respondent, including counseling or treatment designed to bring about the cessation of domestic abuse.

(b) Except as provided below, a final domestic abuse protection order issued by a chancery or county court under the provisions of this chapter shall be effective for such time period as the court deems appropriate. The expiration date of the order shall be clearly stated in the order.

(c) Temporary provisions addressing temporary custody, visitation or support of minor children contained in a final domestic abuse protection order issued by a chancery or county court shall be effective for one hundred eighty (180) days. A party seeking relief beyond that period must initiate appropriate proceedings in the chancery court of appropriate jurisdiction. If at the end of the one-hundred-eighty-day period, neither party has initiated such proceedings, the custody, visitation or support of minor children will revert to the chancery court order addressing such terms that was in effect at the time the domestic abuse protection order was granted. The chancery court in which custody, visitation or support proceedings have been initiated may provide for any temporary provisions addressing custody, visitation or support as the court deems appropriate.

(3) Every domestic abuse protection order issued pursuant to this section shall set forth the reasons for its issuance, shall contain specific findings of fact regarding the existence of abuse, shall be specific in its terms and shall describe in reasonable detail the act or acts to be prohibited. No mutual protection order shall be issued unless that order is supported by

an independent petition by each party requesting relief pursuant to this chapter, and the order contains specific findings of fact regarding the existence of abuse by each party as principal aggressor, and a finding that neither party acted in self-defense.

(4) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for temporary and final domestic abuse protection orders. The use of standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(5) Upon issuance of any protection order by the court, the order shall be entered in the Mississippi Protection Order Registry by the clerk of the court pursuant to Section 93-21-25, and a copy shall be provided to the sheriff's department in the county of the court of issuance.

(6) Upon subsequent petition by either party and following a hearing of which both parties have received notice and an opportunity to be heard, the court may modify, amend, or dissolve a domestic abuse protection order previously issued by that court.

(7) A domestic abuse protection order issued under this section is effective in this state, in all other states, and in United States territories and tribal lands. A court shall not

limit the scope of a protection order to the boundaries of the State of Mississippi or to the boundaries of a municipality or county within the State of Mississippi.

(8) Procedures for an appeal of the issuance or denial of a final domestic abuse protection order are set forth in Section 93-21-15.1.

SECTION 3. The following shall be codified as Section 93-21-15.1, Mississippi Code of 1972:

93-21-15.1. (1) (a) **De novo appeal.** Any party aggrieved by the decision of a municipal or justice court judge to issue a temporary domestic abuse protection order has the right of a trial de novo on appeal in the chancery court having jurisdiction. The trial de novo shall be held within ten (10) days of the filing of a notice of appeal. All such appeals shall be priority cases and the judge must be immediately notified when an appeal is filed in order to provide for expedited proceedings. The appeal will proceed as if a petition for an order of protection from domestic abuse had been filed in the chancery court. Following the trial de novo, if the petitioner has proved the existence of abuse by a preponderance of the evidence, the chancery court may grant a final domestic abuse protection order. In granting a final domestic abuse protection order, the chancery court may provide for relief that includes, but is not limited to, the relief set out in Section 93-21-15(2).

(b) **Notice of appeal.** The party desiring to appeal a decision from municipal or justice court must file a written notice of appeal with the chancery court clerk within ten (10) days of the issuance of a domestic abuse protection order. In all de novo appeals, the notice of appeal and payment of costs must be simultaneously filed and paid with the chancery clerk. Costs for an appeal by trial de novo shall be calculated as specified in subsection (4) of this section. The written notice of appeal must specify the party or parties taking the appeal and must designate the judgment or order from which the appeal is taken. A copy of the notice of appeal must be provided to all parties or their attorneys of record and to the clerk of the court from which the appeal is taken. A certificate of service must accompany the written notice of appeal. Upon receipt by the municipal or justice court of the notice of appeal, the clerk of the lower court shall immediately provide the entire court file to the chancery clerk.

(2) (a) **Appeals on the record.** Any party aggrieved by the decision of a county court to issue a final domestic abuse protection order or to deny such an order shall be entitled to an appeal on the record in the chancery court having jurisdiction. If the county court has issued a domestic abuse protection order as a temporary order instead of a final order as contemplated by Section 93-21-15(2), the chancery court shall permit the appeal on the record and shall treat the temporary order issued by the

county court as a final order on the matter. The chancery court shall treat the appeal as a priority matter and render a decision as expeditiously as possible.

(b) **Notice of appeal and filing the record.** The party desiring to appeal a decision from county court must file a written notice of appeal with the chancery court clerk within ten (10) days of the issuance of a domestic abuse protection order. In all appeals, the notice of appeal and payment of costs, where costs are applicable, shall be simultaneously filed and paid with the chancery clerk. Costs shall be calculated as specified in subsection (4) of this section. The written notice of appeal must specify the party or parties taking the appeal and must designate the judgment or order from which the appeal is taken. A copy of the notice of appeal must be provided to all parties or their attorneys of record and to the clerk of the court from which the appeal is taken. A certificate of service must accompany the written notice of appeal. In all appeals in which the appeal is solely on the record, the record from the county court must be filed with the chancery clerk within thirty (30) days of filing of the notice of appeal. However, in cases involving a transcript, the court reporter or county court may request an extension of time. The court, on its own motion or on application of any party, may compel the compilation and transmission of the record of proceedings. Failure to file the record with the court clerk or to request the assistance of the court in compelling the same

within thirty (30) days of the filing of the written notice of appeal may be deemed an abandonment of the appeal and the court may dismiss the same with costs to the appealing party or parties, unless a party or parties is exempt from costs as specified in subsection (4) of this section.

(c) **Briefs on appeal on the record.** Briefs, if any, filed in an appeal on the record must conform to the practice in the Supreme Court as to form and time of filing and service, except that the parties should file only an original and one (1) copy of each brief. The consequences of failure to timely file a brief will be the same as in the Supreme Court.

(3) **Supersedeas.** The perfecting of an appeal, whether on the record or by trial de novo, does not act as a supersedeas. Any domestic abuse protection order issued by a municipal, justice or county court shall remain in full force and effect for the duration of the appeal, unless the domestic abuse protection order otherwise expires due to the passage of time.

(4) **Cost bond.** In all appeals under this section, unless the court allows an appeal in forma pauperis or the appellant otherwise qualifies for exemption as specified in this subsection (4), the appellant shall pay all court costs incurred below and likely to be incurred on appeal as estimated by the chancery clerk. In all cases where the appellant is appealing the denial of an order of protection from domestic abuse by a county court, the appellant shall not be required to pay any costs associated

with the appeal, including service of process fees, nor shall the appellant be required to appeal in forma pauperis. In such circumstances, the court may assess costs of the appeal to the appellant if the court finds that the allegations of abuse are without merit and the appellant is not a victim of abuse. Where the issuance of a mutual protection order is the basis of the appeal, the appellant may be entitled to reimbursement of appellate costs paid to the court as a matter of equity if the chancery court finds that the mutual order was issued by the lower court without regard to the requirements of Section 93-21-15(3).

(5) The appellate procedures set forth in this section for appeals from justice, municipal and county courts shall control if there is a conflict with another statute or rule.

(6) Any party aggrieved by the issuance or denial of a final order of protection by a chancery court shall be entitled to appeal the decision. The appeal shall be governed by the Mississippi Rules of Appellate Procedure and any other applicable rules or statutes.

SECTION 4. This act shall take effect and be in force from
and after July 1, 2019.

PASSED BY THE SENATE
March 28, 2019




PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2019



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR
April 16, 2019
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